



NEIL ABERCROMBIE  
GOVERNOR

BRIAN SCHATZ  
LT. GOVERNOR

STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
335 MERCHANT STREET, ROOM 310  
P.O. Box 541  
HONOLULU, HAWAII 96809  
Phone Number: 586-2850  
Fax Number: 586-2856  
[www.hawaii.gov/dcca](http://www.hawaii.gov/dcca)

KEALI'I S. LOPEZ  
DIRECTOR

EVERETT KANESHIGE  
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEES ON CONSUMER  
PROTECTION & COMMERCE AND JUDICIARY

TWENTY-SIXTH LEGISLATURE  
Regular Session of 2011

Wednesday, February 23, 2011  
2 p.m.

**TESTIMONY ON HOUSE BILL NO. 924, H.D. 1 – RELATING TO INSURANCE.**

TO THE HONORABLE ROBERT HERKES AND GILBERT KEITH-AGARAN, CHAIRS,  
AND MEMBERS OF THE JOINT COMMITTEE:

My name is Gordon Ito, State Insurance Commissioner, testifying on behalf of the Department of Commerce and Consumer Affairs ("Department").

The Department has concerns about whether the provisions contained in this bill belong in the Insurance Code, Hawaii Revised Statutes ("HRS") chapter 431.

The purpose of this bill is to add a new part to Article 1 of the Insurance Code to provide clarification of coverage for damages arising out of construction defects, in response to the Hawaii Intermediate Court of Appeals' decision in *Group Builders, Inc. v. Admiral Ins. Co.*, 123 Haw. 142 (2010). The H.D. 1 changed the effective date to July 1, 2112.

The issue in the *Group Builders* case was whether alleged faulty construction work, giving rise to contractual claims, constitutes an "occurrence" under a commercial general liability policy.

The purpose of the Insurance Code is to regulate the business of insurance by licensing and examining insurers, producers, and other licensees. As a regulator, the

Insurance Division does not become involved in the interpretation of liability insurance policies or whether an insurance policy meets the reasonable expectations of construction professionals.

As such, the Department believes that the provisions contained in this bill do not belong in the Insurance Code.

We thank this Committee for the opportunity to present testimony on this matter.



February 22, 2011

Representative Robert Herkes, Chair  
Committee on Consumer Protection and Commerce  
Representative Gilbert Keith-Agaran, Chair  
Committee on Judiciary  
State Capitol, Room 325

RE: HB 924, HD1 "Relating to Insurance"

Chair Herkes, Chair Keith-Agaran and Members of the Joint Committees:

(INSERT PARAGRAPH INTRODUCING YOURSELF AND YOUR COMPANY OR ORGANIZATION)

I Kevin Pena, President of Foundations Hawaii Inc. am in strong support of HB924 and urge your committees to amend HD1 with an effective date of "upon approval". HB924 is intended to avert the crises created by the decision of the Hawaii Intermediate Court of Appeals in *Group Builders, Inc. v. Admiral Ins. Co.* (Haw.App.2010). Contractors, developers, and others have paid millions of dollars for insurance coverage that the Intermediate Court of Appeals now says they do not have. The decision has had a severe negative impact on both the development and construction industries in Hawaii, and at the same time, created a massive windfall for certain insurers.

The construction industry is one of the pillars of Hawaii's economy. At its peak in 2007, it employed over 35,000 people, with total payroll of more than \$1.8 billion. (Source, the State of Hawaii Data Book, 2009). In the last ten years, hundreds of private and public construction projects have been completed, including the John A. Burns School of Medicine, the Kapolei Judiciary complex, the Kauai Judiciary Building, the Moana Pacific, 909 Kapiolani, and Kalia Tower, just to name a few. If injury or property damage (which is alleged to have arisen out of any construction defect) occurs at one of these projects, there would be no insurance coverage for the developer, contractors, or subcontractors. This could be a catastrophic situation.

This bill would reinstate the insurance coverage that contractors, subcontractors and developers paid for. Please move this bill out of your committees with an amended effective date. Thank you for the opportunity to share my views with you.

Kevin Pena

## Testimony for HB924 on 2/23/2011 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

**Sent:** Tuesday, February 22, 2011 2:26 PM

**To:** CPCtestimony

**Cc:** ack@ack-inc.com

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Testimony for CPC/JUD 2/23/2011 2:00:00 PM HB924

Conference room: 325

Testifier position: support

Testifier will be present: Yes

Submitted by: Russell Young

Organization: Albert C. Kobayashi, Inc.

Address:

Phone:

E-mail: ack@ack-inc.com

Submitted on: 2/22/2011

Comments:



**Property Casualty Insurers  
Association of America**

Shaping the Future of American Insurance  
1415 L Street, Suite 670, Sacramento, CA 95814-3972

To: The Honorable Robert N. Herkes, Chair  
House Consumer Protection & Commerce Committee  
  
The Honorable Gilbert S.C. Keith-Agaran, Chair  
House Judiciary Committee

From: Samuel Sorich, Vice President

Re: **HB 924 HD1 – Relating to Insurance**  
**PCI Position: Oppose**

Date: Wednesday, February 23, 2011  
2:00 p.m.; Conference Room 325

Aloha Chair Herkes, Chair Keith-Agaran and Members of the Committees:

The Property Casualty Insurers Association of American (PCI) PCI is opposed to HB 924 HD1 because the bill is unnecessary and unfair.

HB 924 HD1 is intended to address a purported problem in the availability of insurance coverage for damages resulting from construction defect. However, the concern about the availability of coverage is being addressed by policy endorsements that are readily available in the insurance market. There is no necessity to impose statutory coverage mandates in light of the competitive market response to the construction defect coverage issue.

There is a fundamental unfairness inherent in HB 924 HD1 since in addition to requiring insurers to pay for losses that they did not contract to incur, the bill would make these changes retroactive. This retroactive rewriting of policies currently in effect is not only unfair, it likely constitutes an impermissible impairment of existing contractual obligations and is unconstitutional. HB 924 HD1 would surely spawn litigation on these issues, which is not in the best interests of Hawaii businesses, Hawaii insurers or the state's judicial system.

For these reasons, PCI asks the Committees to 'hold' this bill in committee.

# WAILEA MF-9 ASSOCIATES LLC

411 Huku Li'i Place #204  
Kihei, HI 96753

Phone 808-891-8363  
Fax 808-891-8364

TESTIMONY OF MARTIN F. QUILL, MANAGER  
WAILEA MF-9 ASSOCIATES, LLC  
IN SUPPORT OF H.B. No. 924, HD 1

BEFORE THE HOUSE COMMITTEE  
ON CONSUMER PROTECTION & COMMERCE  
AND  
HOUSE COMMITTEE ON JUDICIARY  
WEDNESDAY, FEBRUARY 23, 2011  
2:00 P.M.  
CONFERENCE ROOM 325

Chairperson Herkes and Members  
of the House Committee On Consumer Protection & Commerce  
-and-

Chairperson Keith-Agaran and Members  
of the House Committee On Judiciary:

Thank you for this opportunity to present testimony generally in support of House Bill No. 924, HD 1. This testimony is offered by Wailea MF-9 Associates LLC ("MF-9"), a Maui condominium developer.

MF-9 supports this important legislation which is intended to address the adverse impact of the decision by the Hawaii Intermediate Court of Appeals in *Group Builders, Inc. v. Admiral Ins. Co.* (Haw. App. 2010).

This decision has had a severe negative impact on both the development and construction industries in Hawaii, and at the same time, created a massive windfall for certain insurers. Indeed, as far as I can tell, the insurers who have taken the most aggressive position on *Group Builders* are not the local insurers who are committed to the Hawaii market. Rather, the insurers who are opportunistically exploiting *Group Builders* and filing lawsuits against their insureds to defeat coverage are the world's largest insurers who have no commitment to Hawaii.

In MF-9's case, it spent literally millions of dollars for insurance coverage for its Maui project. The *Group Builders* decision, at least from the perspective of MF-9's insurer, turned those premium dollars into a complete windfall. This left MF-9, as well as the Hawaii contractor and subcontractors responsible for building the project, without insurance coverage for construction defects, the very thing they sought coverage for, paid millions of dollars to obtain, and was a risk which the insurer understood it was covering and for which it charged millions of dollars in premiums. In fact, the key endorsement in MF-9's policy expressly states that the policy applies to property damage arising out of construction operations.

The *Group Builders* decision has affected, or may one day affect, *every* real estate developer and *every* construction-related company doing business in Hawaii, not just "construction professionals" as the current draft of the bill states. Among those whose comprehensive general liability insurance coverage was effectively eliminated by *Group Builders* are developers, as well as general contractors and subcontractors.

We therefore suggest the bill be amended to clarify that any entity or individual, including, but not limited to a builder, developer, general contractor, contractor, or original seller, who, at the time of sale, was also in the business of selling units to the public for the property that is the subject of a claim or was in the business of building, developing, or constructing units for public purchase for the property also fall within the protection of H.B. No. 924, HD 1.

This remedial, curative legislation is urgently needed to restore the insurance coverage that Hawaii's insureds believed they paid for and had, and which historically has been recognized and provided by insurers under commercial general liability policies prior to the *Group Builders* decision. Indeed, many insurers issued, and insureds obtained, extended coverage for complete operations under such policies, typically for a period of ten years, the period of the statute of repose that applies to actions for damages due to a deficiency in the design or construction of an improvement to real property under Haw. Rev. Stat. Section 657-8. Some large mainland insurers are taking the position that even this extended coverage is abrogated by *Group Builders*. Remedying the unfortunate effect of *Group Builders* however goes beyond just this state's

construction industry. It would protect this state's homeowners and purchasers of real estate. It would reinstate the coverages afforded indirectly to those who purchase from developers. Without the promise of insurance standing behind the developers, many potential homeowners in this State could look elsewhere rather than risk a defunct and bankrupt builder who has no insurance coverage to fix problems a building may suffer after sale and during the 10 years of the statute of repose; the very type of remedy our state's right to repair law seeks to encourage.

This decision will undoubtedly also have an adverse impact on the surety companies who must now fill the void because of the ill-advised insurers who are exploiting *Group Builders* to their advantage.

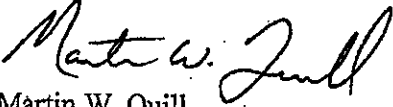
Absent immediate attention to this injustice by the Hawaii legislature, *Group Builders* will have a serious adverse impact on all future construction projects in Hawaii, including those of state and county agencies.

The *Group Builders* decision presents a very urgent problem to Hawaii's development and construction industries *today* because insurers are exploiting the decision now by suing their insureds. We therefore urge the Committees to reinstate an "effective upon signing" effective date in a revised draft of the bill.

Respectfully submitted,

WAILEA MF-9 ASSOCIATES LLC,  
A Hawaii Limited Liability Company

By: WAILEA MF-9 DEVELOPERS LLC  
A Hawaii Limited Liability Company  
Its Manager-Member

  
Martin W. Quill  
Its Manager



## **TESTIMONY OF MICHAEL TANOUE**

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### **HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE**

Representative Robert N. Herkes, Chair  
Representative Ryan I. Yamane, Vice Chair

**HOUSE COMMITTEE ON JUDICIARY**  
Representative Gilbert Keith-Agaran, Chair  
Representative Karl Rhoads, Vice Chair

Wednesday, February 23, 2011  
2:00 p.m.

### **HB 924, HD1**

Chair Herkes, Chair Keith-Agaran, and members of the Committees, my name is Michael Tanoue, testifying on behalf of Hawaii Insurers Council. Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately 40% of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** HB 924, HD1. As a response to the Hawaii Intermediate Court of Appeals decision in *Group Builders v. Admiral Insurance*, this bill is unnecessary and may likely lead to additional market disruption and lawsuits. The *Group Builders* case held that an insurer has no duty to indemnify in a construction defect lawsuit when the claims asserted against the construction professional are based on breach of a construction contract.

The bill would direct the courts to “presume” that the work of a construction professional resulting in property damage is an “accident” unless the property damage is expected and intended. This bill would instruct the courts that they may consider a list of factors in determining whether an insurance policy meets a construction professional’s objective and reasonable expectation of coverage. In addition, this bill would direct the

courts that they must construe the insurance policy in favor of coverage in the case of conflicting policy provisions. This bill also alters long-standing court decisions by shifting the burden of proof from the construction professional to the insurer to establish whether an exception to a policy exclusion applies. Of great concern to the Hawaii Insurers Council, the bill also operates retroactively.

HB 924, HD1 should be held for many reasons including the following:

1. The bill attaches new legal rights and duties to already completed transactions, resulting in a retroactive statute that may not survive legal challenge. Legislative intent alone is not enough to justify retrospective application of a statute. Retrospective application must still pass constitutional scrutiny, and may be unconstitutional, for example, if such application would violate the separation of powers doctrine, impair the obligation of a contract, or deprive a person of a vested right without due process of law.
2. The bill intrudes upon the prerogative of the Judiciary by directing or instructing courts how to interpret insurance policies issued to construction professionals. This is a matter traditionally and best left to the Judiciary. HB 924, HD1 would improperly invade the province of the Judiciary in violation of the separation of powers doctrine in that it retroactively overrules the ICA's legal conclusion in *Group Builders* that construction defect claims are not "occurrences," *i.e.*, "accidents," under CGL policies.
3. HB 924, HD1 would impair the contractual rights of insurers in violation of Article I, Section 10 of the U.S. Constitution, in that it would retroactively impose legislatively mandated coverage under existing CGL insurance contracts where no coverage previously existed under the *Group Builders* decision. Similarly, the retroactive creation of coverage under existing insurance policies for previously uncovered activity would violate the vested interests of insurers without due process of law.

4. Passage of HB 924, HD1 could also result in years of litigation in the Circuit Courts and the appellate courts regarding the validity of the law in light of its retrospective application. Such litigation over the constitutionality of the statute would benefit neither the insurers nor the contractor insureds.
5. The question of whether an insurer has a duty to provide a defense to a construction professional in a construction defect lawsuit is still pending before the Hawaii Intermediate Court of Appeals. The *Group Builders v. Admiral Insurance* decision referenced in HB 924, HD1 decided only the issue of the duty to indemnify, which is much narrower than the duty to defend.
6. The free market is the best mechanism for insurers to respond to the needs of construction professionals. Several insurers, capable of handling risks of all sizes, have already responded by restoring coverage for construction professionals post-*Group Builders* by policy endorsements.
7. Insurance producers have expressed confidence that they can secure needed coverage for their construction clients. The insurance marketplace is not in crisis at this time; coverage is available and pricing is competitive.
8. However well-intended, legislative mandates could have the contrary effect of worsening the insurance climate by constricting the market, potentially eliminating the variety of insurance coverage options and resulting in higher premiums for construction professionals.

Based on the foregoing, Hawaii Insurers Counsel respectfully requests that HB 924, HD1 be held.

Thank you for the opportunity to testify.

## TESTIMONY OF MIKE ONOFRIETTI, ACAS, MAAA, CPCU

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### HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

Representative Robert N. Herkes, Chair  
Representative Ryan I. Yamane, Vice Chair

### HOUSE COMMITTEE ON JUDICIARY

Representative Gilbert Keith-Agaran, Chair  
Representative Karl Rhoads, Vice Chair

Wednesday, February 23, 2011  
2:00 p.m.

### HB 924, HD1

Chair Herkes, Chair Keith-Agaran, and members of the Committees, my name is Mike Onofrietti, Vice President, Actuary Services, Product Development & Management of Island Insurance Companies. Island is the only locally owned and managed property and casualty insurance company in the State of Hawaii with roots tracing back to our founding in 1939 and does business solely in the State of Hawaii. Our policyholders represent homeowners, owners of automobiles and business owners located throughout all of Oahu and the neighbor Islands. Approximately 60% of our premiums written represent business insurance of which about 30% is written for contractors. We have a vested interest in Hawaii, our business community and contractors doing business in our State.

Island Insurance opposes HB 924, HD1. This bill is a response to the Hawaii Intermediate Court of Appeals decision in *Group Builders v. Admiral Insurance* to which one of the Island Companies, Tradewind Insurance Company, Ltd., was a party. Tradewind held they did have a duty to indemnify Group Builders for property damage resulting from a construction defect. Tradewind, in fact, indemnified original plaintiff and then sought recovery for a portion of these damages from Admiral through court action. Admiral however prevailed in the circuit court with a ruling that there was not a duty to indemnify which was followed by an appeal by Tradewind to the Intermediate Court of Appeals. Unfortunately the Intermediate Court of Appeals upheld the circuit court's decision and further ruled that property damage resulting from construction defect was not an "occurrence" and therefore not covered under the General Liability policy.

Our philosophy on coverage as an insurer responsible to our policyholders has always been and remains that we resolve doubts in favor of providing coverage to our policyholders. Our record clearly shows we rarely file actions to avoid coverage. Following the decision of the Intermediate Court of Appeals, Island Insurance Companies implemented an endorsement providing contractors with coverage for property damage resulting from construction defects which had been negated by the Intermediate Court of Appeals. Most other insurers providing coverage for the majority of the construction business in Hawaii did the same. There is no insurance crisis for contractors. Coverage is available.

HB 924, HD1 should be held for many reasons including the following:

1. The free market has addressed the issue of property damage resulting from construction defect by those insurers which write the majority of the market share of contractors in the State of Hawaii endorsing their policies to provide coverage for property damage resulting from construction defect.
2. This bill also potentially conflicts with the Judiciary's responsibility of interpreting insurance policies.
3. Though the Intermediate Court of Appeals has ruled on the Duty to Indemnify, the far greater obligation, that of the insurer's Duty to Defend, is still pending a decision from that same Court.
4. Mandating coverage which is readily available could result in an adverse reaction from the free market culminating in restriction of coverage and/or higher premiums. Mandating coverage can also send the very wrong message to the market that the Legislature is adverse to a free market system and anti-business.

We therefore ask the Legislature to Hold HB 924, HD1.



P.O. Box 2866  
Honolulu, Hawaii 96803  
(808) 527-7777

**TESTIMONY OF BEN BONDROFF**

**HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE**

Representative Robert N. Herkes, Chair  
Representative Ryan I. Yamane, Vice Chair

**HOUSE COMMITTEE ON JUDICIARY**

Representative Gilbert Keith-Agaran, Chair  
Representative Karl Rhoads, Vice Chair

Wednesday, February 23, 2011  
2:00 p.m.

**HB 924, HD1**

My name is Ben Bondroff, Senior Vice President of First Insurance Company of Hawaii. First Insurance Company opposes this bill for the reasons outlined by Hawaii Insurers Council. We would like to emphasize that part of the Group Builders case is still pending the Intermediate Court of Appeals and therefore any legislative action would be premature.

First Insurance Company underwrites construction liability insurance policies and we have a significant market share in this line of business. We continue to do business in this area and have responded to the first part of the Intermediate Court of Appeals decision in Group Builders by adding an endorsement to our policies. If HB 924, HD1 is passed, First Insurance Company will need to review our underwriting guidelines for this line of insurance.

I'm happy to answer any questions. Thank you for the opportunity to testify.

February 22, 2011

TO: THE HONORABLE ROBERT HERKES, CHAIR AND  
MEMBERS OF THE HOUSE COMMITTEE ON CONSUMER PROTECTION  
& COMMERCE

THE HONORABLE GILBERT S. C. KEITH-AGARAN, CHAIR AND  
MEMBERS OF THE HOUSE COMMITTEE ON JUDICIARY

SUBJECT: HB 924, HD1 RELATING TO INSURANCE.

NOTICE OF HEARING

DATE: Wednesday, February 23, 2011  
TIME: 2:00 pm  
PLACE: Conference Room 325

Dear Chairs and Members of the Committees:

Koga Engineering & Construction, Inc. **strongly supports** HB 924, HD1, Relating to Insurance.

The intent of the bill is to negate the effects of the *Group Builders and Tradewind Insurance Co. v. Admiral Insurance Co.* court decision, and to ensure that the insurance coverage that contractors, subcontractors, and other construction industry participants have already paid for is provided. Contractors and others have long paid insurance premiums for insurance coverage in their Commercial General Liability (CGL) policies that would cover bodily injury and property damage resulting from defective workmanship. The insurance policies themselves supports the interpretation of coverage, the insurance carriers calculated the risk in the premiums they charged to their insured, and the insurance carriers provided coverage for such claims, until the *Group Builders'* decision.

The results of the *Group Builders* decision could be disastrous. Insurance carriers have already denied coverage for claims based on this decision. Some insurance carriers have issued endorsements, but the endorsements are all different and if they provide coverage, they only provide coverage from the date of the endorsement forward. There is no coverage for work that has already been completed. If a catastrophic accident occurred on a project that has already been completed, the insurance carriers would not be legally obligated to cover the claims as a result of the *Group Builders* decision, even though the contractors paid for the coverage. We ask you to fix this significant problem.

February 22, 2011  
HB 924, HD1, Relating to Insurance  
Page 2 of 2

Koga Engineering & Construction, Inc. **strongly supports** the passage of HB 924, HD1, and respectfully asks that the bill be passed out of the committees.

Thank you considering our testimony.

Yours truly,

A handwritten signature in cursive script, appearing to read "Glenn M. Nohara".

Glenn M. Nohara  
Chairman



# **BIA-HAWAII**

**BUILDING INDUSTRY ASSOCIATION**

February 23, 2011

Representative Robert Herkes, Chair  
Committee on Consumer Protection and Commerce  
Representative Gilbert Keith-Agaran, Chair  
Committee on Judiciary  
State Capitol, Room 325

RE: HB 924, HD1 "Relating to Insurance"

Chair Herkes, Chair Keith-Agaran and Members of the Joint Committees:

I am Karen Nakamura, Chief Executive Officer of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-Hawaii strongly supports the passage of HB924 and urges your committees to amend HD1 with an effective date of "upon approval". HB924 is intended to avert the crises created by the decision of the Hawaii Intermediate Court of Appeals in *Group Builders, Inc. v. Admiral Ins. Co.* (Haw.App.2010). Contractors, developers, and others have paid millions of dollars for insurance coverage that the Intermediate Court of Appeals now says they do not have. Unless immediate action is taken to address the injustice created by *Group Builders, Inc. and Tradewind Insurance Company, Ltd. v. Admiral Ins. Co.* (Haw.App. 2010), the decision will have a severe negative impact on all construction projects in Hawaii, including those of the state and county agencies.

Some insurance companies have issued endorsements, claiming that they will cover such damages. However, the problem is that the endorsements are **prospective only**. This means that there is **no insurance coverage** for injuries or property damage claims that arise from construction defects on projects that were **completed in the last 10 years**, such as the John A. Burns School of Medicine, the Kapolei Judiciary complex, the Kauai Judiciary Building, the Moana Pacific, 909

Kapiolani, and Kalia Tower, just to name a few. If injury or property damage (which is alleged to have arisen out of any construction defect) occurs at one of these projects, there would be no insurance coverage for the developer, contractors, or subcontractors. This could be a catastrophic situation.

This bill would reinstate the insurance coverage that contractors, subcontractors and developers paid for. Please move this bill out of your committees with an amended effective date.

Thank you for the opportunity to share my views with you.

A handwritten signature in cursive script, reading "Karen I. Nakamura". The signature is written in black ink and is positioned above the printed name and title.

Chief Executive Officer  
BIA-Hawaii



P.O. Box 757  
Kailua, HI 96734  
Ph. (808) 263-4900  
Fax (808) 263-5966  
[www.ccs-hawaii.com](http://www.ccs-hawaii.com)

February 23, 2011

Representative Robert Herkes, Chair  
Committee on Consumer Protection and Commerce  
Representative Gilbert Keith-Agaran, Chair  
Committee on Judiciary  
State Capitol, Room 325

RE: HB 924, HD1 "Relating to Insurance"

Chair Herkes, Chair Keith-Agaran and Members of the Joint Committees:

I am Greg Thielen, President and RME of Complete Construction Services. I am a Small Business Owner and have over 20 years experience in the Construction Industry.

I strongly support HB924. The intent of the bills is to negate the effects of the *Group Builders and Tradewind Insurance Co. v. Admiral Insurance Co.* court decision, and to ensure that the insurance coverage that contractors, subcontractors, and other construction industry participants have already paid for is provided.

Thank you for the opportunity to provide this testimony.

Sincerely,

Greg Thielen  
President/RME



1320 Kalani Street, # 310  
Honolulu, Hawaii 96817  
Ph: (808) 832-2622  
Fax: (808) 847-5168

February 23, 2011

Representative Robert Herkes, Chair  
Committee on Consumer Protection and Commerce  
Representative Gilbert Keith-Agaran, Chair  
Committee on Judiciary  
State Capitol, Room 325

RE: HB 924, HD1 "Relating to Insurance"

Chair Herkes, Chair Keith-Agaran and Members of the Joint Committees:

Aloha, I am Mark Kalahale, President of Aloha State Services, Ltd. I have been in business since 1984 and very concerned about HB924.

I am in strong support of HB924 and urge your committees to amend HD1 with an effective date of "upon approval". HB924 is intended to avert the crises created by the decision of the Hawaii Intermediate Court of Appeals in *Group Builders, Inc. v. Admiral Ins. Co.* (Haw.App.2010). Contractors, developers, and others have paid millions of dollars for insurance coverage that the Intermediate Court of Appeals now says they do not have. The decision has had a severe negative impact on both the development and construction industries in Hawaii, and at the same time, created a massive windfall for certain insurers.

The construction industry is one of the pillars of Hawaii's economy. At its peak in 2007, it employed over 35,000 people, with total payroll of more than \$1.8 billion. (Source, the State of Hawaii Data Book, 2009). In the last ten years, hundreds of private and public construction projects have been completed, including the John A. Burns School of Medicine, the Kapolei Judiciary complex, the Kauai Judiciary Building, the Moana Pacific, 909 Kapiolani, and Kalia Tower, just to name a few. If injury or property damage (which is alleged to have arisen out of any construction defect) occurs at one of these projects, there would be no insurance coverage for the developer, contractors, or subcontractors. This could be a catastrophic situation.

This bill would reinstate the insurance coverage that contractors, subcontractors and developers paid for. Please move this bill out of your committees with an amended effective date.

Thank you for the opportunity to share my views with you.

Sincerely

Mark R. Kalahale  
President  
Aloha State Services, Ltd.

COMMERCIAL AIR CONDITIONING  
REFRIGERATION • REPAIR  
MAINTENANCE • INSTALLATION  
SBA 8A CERTIFIED • LIC# C-8361

Leonard K.P. Leong  
Vice President

February 23, 2011

Representative Robert Herkes, Chair  
Committee on Consumer Protection and Commerce  
State Capitol, Room 325

RE: HB 924, HD1 "Relating to Insurance"

Dear Chair and Members of the Committee,



Royal Contracting Co., Ltd strongly support HB 924, related to insurance.

Royal Contracting is celebrating 50 years of being a contractor in Hawaii.

During the past years we have faced many challenges, but to lose insurance coverage that we have had for 50 years is our greatest challenge.

It is something that is paid for and insurance should be provided for the premium paid.

Without proper insurance coverage, smaller contractors may be forced to close their business in lieu of risking their equity or close when their equity is spent on correcting defects and related damages.

We urge passage of HB 924

Sincerely,



Royal Contracting Co., Ltd.  
Leonard K.P. Leong  
Vice President

# Painting and Decorating Contractors Association of Hawaii

970 N. KALAHEO AVE., SUITE A217 • KAILUA, HAWAII 96734 • TELEPHONE (808) 254-2322 •  
FAX (808) 254-2355

February 22, 2011

Representative Robert Herkes, Chair  
Committee on Consumer Protection and Commerce  
Representative Gilbert Keith-Agaran, Chair  
Committee on Judiciary  
State Capitol, Room 325

RE: HB 924, HD1 "Relating to Insurance"

Chair Herkes, Chair Keith-Agaran and Members of the Joint Committees:

The Painting and Decorating Contractors Association (PDCA) of Hawaii was chartered in 1961 and represents over 30 contractors and supplier firms that employ over 2000 individuals Statewide.

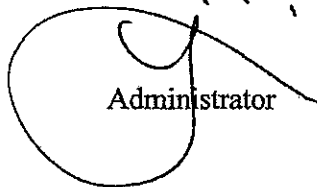
We are in strong support of HB924 and urge your committees to amend HD1 with an effective date of "upon approval". HB924 is intended to avert the crises created by the decision of the Hawaii Intermediate Court of Appeals in *Group Builders, Inc. v. Admiral Ins. Co.* (Haw.App.2010). Contractors, developers, and others have paid millions of dollars for insurance coverage that the Intermediate Court of Appeals now says they do not have. The decision will have a severe negative impact on all construction projects in Hawaii, including those of the State and County agencies.

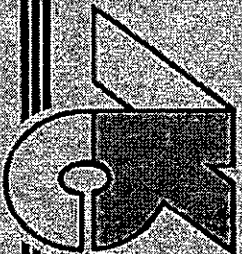
This bill would reinstate the insurance coverage that contractors, subcontractors and developers paid for. Please move this bill out of your committees with an amended effective date.

Thank you for the opportunity to submit our testimony.

Raymond H. Fuji

Administrator





**ALBERT C.  
KOBAYASHI, INC.  
GENERAL CONTRACTORS**

Gentry Business Park • 94-535 Ukele Street  
Waipahu, Hawaii 96797 • Phone (808) 671-6460 • FAX (808) 676-5832 • Lic. #ABC-07819

February 23, 2011

Representative Robert Herkes, Chair  
Committee on Consumer Protection and Commerce  
Representative Gilbert Keith-Agaran, Chair  
Committee on Judiciary  
State Capitol, Room 325

RE: HB 924, HD1 "Relating to Insurance"

Chair Herkes, Chair Keith-Agaran and Members of the Joint Committees:


We strongly support the passage of HB924 and urge your committees to amend HD1 with an effective date of "upon approval." HB924 is intended to avert the crises created by the decision of the Hawaii Intermediate Court of Appeals in *Group Builders, Inc. v. Admiral Ins. Co.* (Haw.App.2010). Contractors, developers, and others have paid millions of dollars for insurance coverage that the Intermediate Court of Appeals now says they do not have. Unless immediate action is taken to address the injustice created by *Group Builders, Inc. and Tradewind Insurance Company, Ltd. v. Admiral Ins. Co.* (Haw.App. 2010), the decision will have a severe negative impact on all construction projects in Hawaii, including those of the state and county agencies.

Some insurance companies have issued endorsements, claiming that they will cover such damages. However, the problem is that the endorsements are prospective only. This means that there is no insurance coverage for injuries or property damage claims that arise from construction defects on projects that were completed in the last 10 years, such as the John A. Burns School of Medicine, the Kapolei Judiciary complex, the Kauai Judiciary Building, the Moana Pacific, 909 Kapiolani, and Kaile Tower, just to name a few. If injury or property damage (which is alleged to have arisen out of any construction defect) occurs at one of these projects, there would be no insurance coverage for the developer, contractors, or subcontractors. This could be a catastrophic situation.

This bill would reinstate the insurance coverage that contractors, subcontractors and developers paid for. Please move this bill out of your committees with an amended effective date.

Thank you for the opportunity to share my views with you.

Sincerely,

  
Russell Young  
President



**RALPH S. INOUE CO LTD**  
**GENERAL CONTRACTOR**

2831 Awaawaloa Street  
Honolulu, Hawaii 96819

T: 808.839.9002  
F: 808.833.5971

License No. ABC-457  
Founded in 1962

February 23, 2011

TO: THE HONORABLE ROBERT HERKES, CHAIR AND  
MEMBERS OF THE HOUSE COMMITTEE ON CONSUMER PROTECTION  
& COMMERCE

THE HONORABLE GILBERT S. C. KEITH-AGARAN, CHAIR AND  
MEMBERS OF THE HOUSE COMMITTEE ON JUDICIARY

SUBJECT: HB 924, HD1 RELATING TO INSURANCE.

NOTICE OF HEARING

DATE: Wednesday, February 23, 2011  
TIME: 2:00 pm  
PLACE: Conference Room 325

Dear Chairs and Members of the Committees,

My name is Lance Inouye and I am President of Ralph S. Inouye Co., Ltd. (RSI), General Contractor and member of the General Contractors Association of Hawaii. RSI **strongly supports** HB 924, HD1, Relating to Insurance.

RSI was founded by my dad, Ralph S. Inouye, in 1962, and has continued to be in business as a Hawaii General Contractor since then. Over those 49 years, RSI has grown to be what I would consider a medium-sized general contractor in Hawaii. My dad, who is now 95 years old, continues working as RSI's Chairman.

Just over the past 10 years, RSI has paid nearly \$1.5M in Commercial General Liability (CGL) premiums and Excess coverage. Fortunately, to date, RSI has been able to avoid claims under those policies such that our carriers have paid less than \$2500 in total over those 10 years<sup>1</sup>. Our carriers and agents have routinely represented to RSI that our policies cover Property Damage and Bodily Injury claims that *arise out of* construction defects for the 10 years that we may be held responsible for such claims pursuant to HRS Section 658-7. *Group Builders, Inc. v. Admiral Ins. Co. (Haw. App. 2010)* effectively stripped that coverage from policies RSI purchased before the decision. We are simply asking that coverage to be restored.

The results of the *Group Builders* decision could be disastrous. Insurance carriers have already denied coverage for claims based on this decision. Some insurance carriers have issued endorsements, but the endorsements are all different and if they provide coverage, they only provide coverage from the date of the endorsement forward. They provide no coverage for work completed over the past 10 years under policies in effect prior to the *Group Builders* decision. If a catastrophic accident occurred on a project completed within those 10 years, the insurance

<sup>1</sup> Several small claims less than the policy deductibles were paid by RSI over the years.



February 23, 2011

Page 2

carriers issuing policies before the *Group Builders* decision may not be legally obligated to cover the claims as a result of that decision, even though the contractors paid for the coverage. Project owners, the State and City on public works contracts, and other entities involved in the affected projects, who were named as additional insureds on those CGL policies and who may have paid for the coverage as well, would be left without coverage. One such catastrophic accident could close many entities involved in the affected project, including subcontractors and developers who may have also purchased similar CGL policies, potentially leaving end-users with liability for those claims. We are asking you to fix this significant problem.

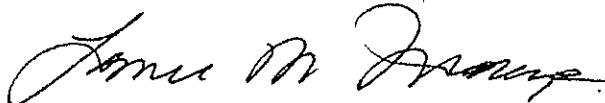
The intent of the bill is to simply negate the effects of the *Group* decision, and to ensure that the insurance coverage that contractors, subcontractors, and other construction industry participants have already paid for is provided.

RSI **strongly supports** the passage of HB 924, HD1, and respectfully asks that the bill be passed out of the committees.

Thank you for considering RSI's concerns on the above bill.

Sincerely,

RALPH S. INOUE CO., LTD.

A handwritten signature in black ink, appearing to read "Lance M. Inouye". The signature is fluid and cursive, with the first name "Lance" being the most prominent part.

Lance M. Inouye  
President & CEO

16th Floor • Ali'i Place  
1099 Alakea Street  
Honolulu, Hawai'i 96813

P.O. Box 1760  
Honolulu, Hawai'i 96806

Tel: (808) 523-9000  
Fax: (808) 533-4184  
E-mail: [mail@legalthawaii.com](mailto:mail@legalthawaii.com)  
[www.legalthawaii.com](http://www.legalthawaii.com)

A. Bernard Bays  
Harvey J. Lung  
Crystal K. Rose  
Karin L. Holma  
Bruce D. Voss  
Craig P. Wagnild  
Ryan H. Engle  
Michael C. Carroll

A Partnership of  
Law Corporations

Of Counsel:  
Phillip L. Deaver  
Edward E. Case  
J.P. Schmidt

Sharon E. Har  
Adrian I. Lavarias  
Sarah M. Love  
Matthew C. Shannon  
Christian D. Chambers  
David R. Major  
Bart W. Howk  
Aarin E. Gross

Jason N. Baba  
(1957-2001)

February 23, 2011

House Committee on Consumer Protection and Commerce  
The Honorable Robert N. Herkes, Chair  
Members of the Committee

House Committee on Judiciary  
The Honorable Gilbert S.C. Keith-Agaran, Chair  
Members of the Committee

HB924 – RELATING TO INSURANCE  
Wednesday, February 23, 2011, 2:00 p.m., Conference Room 325

My name is Karin L. Holma. I am on the Board of Directors of the Building Industry Association of Hawaii, and have been a construction lawyer in Hawaii for 19 years. I am in strong support of HB924, and am writing to address certain issues that have been raised in opposition to it.

Contrary to the arguments raised by some, HB924 is constitutional.<sup>1</sup> The bill is not retroactive because it restores rights that contractors and others in the construction industry had before the Hawaii Intermediate Court of Appeals decided *Group Builders and Tradewinds Ins. Co. v. Admiral Ins. Co.* (Haw. App. 2010). It does not create new obligations or impose new duties. Even if the bill was characterized as “retroactive,” it is constitutional because it has a significant and legitimate public purpose. Where a statute is enacted to deal with a broad, generalized economic problem retroactively, it does not violate the Contracts Clause, *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978); *Home Building & Loan Ass’n v. Blaisdell*, 290 U.S. 398 (1934), nor does it violate due process. *Landgraf v. USI Film Prods.*, 511 U.S. 244, 266 (1994).

Some companies have issued endorsements, claiming that they will cover such damages. The problem with the endorsements is that they are prospective only. This means that there is no insurance coverage for injuries or property damage claims that arise from construction defects on projects that were completed in the last 10 years, such as the J.A. Burns School of Medicine, the Kapolei Judiciary Center, or the Kauai Judiciary Building, just to name a few. Also, not all of the carriers have issued endorsements (notably, Chartis or AIG, which has

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<sup>1</sup> Opponents of HB924 would likely argue that HB924 is unconstitutional because it violates the Contracts Clause (Article I, section 10 of U.S. Constitution), the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution, or the Due Process and Equal Protection Clause of the Constitution of the State of Hawaii.

February 23, 2011

Page 2

earned millions of dollars in premiums), the endorsements are all different, and it is difficult to determine what coverage is being provided.

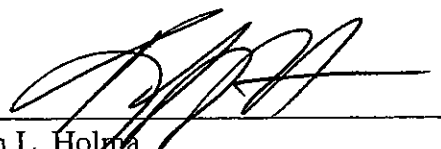
Opponents also argue that legislation such as HB924 could "constrict" the insurance market. In the only state that has enacted similar legislation, the only carriers which left the market were those that claimed there was no coverage.<sup>2</sup>

Finally, opponents argue that it is not appropriate for the Legislature to enact this bill where the Intermediate Court of Appeals is still considering the issue of a duty to defend in the *Group Builders* case. The *Group Builders* decision is final with respect to the duty to indemnify, which is what the bill addresses. The court's decision on the duty to defend is irrelevant to HB924.

Sincerely,

BAYS LUNG ROSE & HOLMA

By: \_\_\_\_\_

  
Karin L. Holma  
Attorney at Law, A Law Corporation  
Its General Partner

KLH:lsg

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<sup>2</sup> Notably, very few state courts have decided cases in the same way as *Group Builders* was decided.

## CPCtestimony

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From: Curt Kiri [curtk@hawaii.rr.com]  
Sent: Tuesday, February 22, 2011 10:38 PM  
To: CPCtestimony  
Subject: HB 924

Representative Robert Herkes, Chair  
Committee on Consumer Protection and Commerce  
Representative Gilbert Keith-Agaran, Chair  
Committee on Judiciary  
State Capitol, Room 325

RE: HB 924, HD1 "Relating to Insurance"

Chair Herkes, Chair Keith-Agaran and Members of the Joint Committees:

I appreciate the opportunity to share my point view with you from a local boy who started as a construction laborer and became a licensed General Contractor.

My name is Curt Kiri and I am the president of CK Independent Living Builders. We specialize in home modification for seniors and physically challenged. Besides running my company, I volunteer my time to speak to seniors and caregivers throughout Oahu about how to make their homes safe and live independently and I am also on the State's Homes For Life Task Force.

I firmly support the passage of HB924 and urge your committees to amend HD1 with an effective date of "upon approval". HB924 is intended to avert the crises created by the decision of the Hawaii Intermediate Court of Appeals in *Group Builders, Inc. v. Admiral Ins. Co.* (Haw.App.2010).

There are thousands of contractors, developers, subcontractors and others who have paid millions of dollars for insurance coverage that the Intermediate Court of Appeals now says they do not have. That is like paying your homeowners and hurricane insurance for years and after a hurricane, the insurance company tells you that you have no coverage. That is just not right! So unless immediate action is taken to address the injustice created by *Group Builders, Inc. and Tradewind Insurance Company, Ltd. v. Admiral Ins. Co.* (Haw.App. 2010), the decision will have a devastating negative impact on all construction projects in Hawaii, including those of the state and county agencies; which will cripple the already fragile economy in Hawaii. You will have more unlicensed and uninsured "contractors" (handyman) out there doing work for cash; which does not generate any tax revenue for the State and also leaves the public with no one to turn to when something happens.

Some insurance companies have issued endorsements, claiming that they will cover such claim damages. However, the truth is that the endorsements are prospective only; which in reality means that there is **NO INSURANCE COVERAGE** for injuries or property damage claims that arise from construction defects on projects that were completed in the last 10 years; for example the John A. Burns School of Medicine, the Kapolei Judiciary complex, the Kauai Judiciary Building, the Colony at the Peninsula in Hawaii Kai, Moana Pacific, Kalia Tower and 909 Kapiolani condominium, just to name a few. It may also affect the new Rail project for generations.

If injury or property damage (which is alleged to have arisen out of ANY construction defect) occurs at one of these projects, there would be no insurance coverage for the developer, contractors, or subcontractors. As you

know the construction industry is the foundation in Hawaii's economy, and this could be the start of a domino effect to a catastrophic economic situation.

This bill would reinstate the insurance coverage that contractors, subcontractors and developers paid for. Please move this bill out of your committees with an amended effective date and continue to rebuild Hawaii's economic foundation.

Thank you very much.

Curt Kiriu CAPS, CR, CF

CAPS (Certified Aging-in-Place Specialist)

RRP (Renovate, Repair and Painting) EPA Certified Renovator and EPA Certified Firm

President

CK Independent Living Builders

Phone: (808) 258-8158

License: BC#29528



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IMPORTANT NOTICE: This message is intended solely for the review of the person(s) specified above. It may contain information that is confidential to CK Independent Living Builders. If the reader of this message is not the intended recipient or has received this message in error, please immediately delete this message and send a confirmation to this office by email. You are hereby notified that any dissemination, distribution and/or copying of this message is strictly prohibited. Thank you.



# CONSTRUCTORS HAWAII INC.

1728 KAHAI STREET  
HONOLULU, HAWAII 96819  
TELEPHONE (808) 848-2455  
FACSIMILE (808) 842-3509

LICENSE NO. ABC 05927

180 KALANIKOA STREET  
HILO, HAWAII 96720  
TELEPHONE (808) 935-2855  
FACSIMILE (808) 961-6314

February 22, 2011

TO: THE HONORABLE ROBERT N. HERKES, CHAIR AND  
MEMBERS OF COMMITTEE ON CONSUMER PROTECTION &  
COMMERCE

THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR AND  
MEMBERS OF COMMITTEE ON JUDICIARY

SUBJECT: H.B. 924, HD1 RELATING TO INSURANCE.

## NOTICE OF HEARING

DATE: Wednesday, February 23, 2011

TIME: 2:00 pm

PLACE: Conference Room 325

Dear Chairs Herkes and Keith-Agaran and Members of the Committee,

**Constructors Hawaii Inc. strongly supports** the passage of HB 924, HD1.

In *Group Builders, Inc. and Tradewind Insurance Company, Ltd. v. Admiral Ins. Co.* (Haw. App. 2010), the Hawaii intermediate court of appeals held that there was no insurance coverage for contractors and subcontractors for injuries or property damage caused by construction defects. The decision takes away insurance coverage that already existed, and which has been relied upon by the construction industry and by citizens throughout Hawaii for years. HB924, HD1 would restore that coverage and the rights and benefits that contractors and subcontractors have paid millions of dollars for.

Although some insurance companies have issued endorsements, they are all different and if they provide coverage, they only provide coverage from the date of endorsement forward. They provide no coverage for work completed over the past 10 years under policies in effect prior to the *Group Builders* decision. This means that there may be **no insurance coverage** for injuries or property damage claims that arise from construction defects on projects that were completed in the last 10 years, such as the J.A. Burns School of Medicine, the Kapolei Judiciary Center, or the Kauai Judiciary Building, just to name a few. If such a horrific accident were to occur in Hawaii at one of these completed projects, there may be no insurance coverage under the *Group Builders* decision. The findings of this court case will not only hit the large contractors in the pocketbook, it also jeopardizes the existence of hundreds of smaller contractors and subcontractors throughout the state. This is a crisis that should be addressed immediately.



**Alan Shintani Inc.**

GENERAL CONTRACTOR BC 13068

TO: THE HONORABLE ROBERT N. HERKES, CHAIR AND  
MEMBERS OF COMMITTEE ON CONSUMER PROTECTION & COMMERCE

THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR AND  
MEMBERS OF COMMITTEE ON JUDICIARY

SUBJECT: H.B. 924, HD1 RELATING TO INSURANCE.

NOTICE OF HEARING

DATE: Wednesday, February 23, 2011  
TIME: 2:00 pm  
PLACE: Conference Room 325

Dear Chairs Herkes and Keith-Agaran and Members of the Committee,

*Alan Shintani, Inc. **strongly supports** the passage of HB 924, HD1.*

In *Group Builders, Inc. and Tradewind Insurance Company, Ltd. v. Admiral Ins. Co.* (Haw. App. 2010), the Hawaii intermediate court of appeals held that there was no insurance coverage for contractors and subcontractors for injuries or property damage caused by construction defects. The decision takes away insurance coverage that already existed, and which has been relied upon by the construction industry and by citizens throughout Hawaii for years. HB924, HD1 would restore that coverage and the rights and benefits that contractors and subcontractors have paid millions of dollars for.

Although some insurance companies have issued endorsements, they are all different and if they provide coverage, they only provide coverage from the date of endorsement forward. They provide no coverage for work completed over the past 10 years under policies in effect prior to the *Group Builders* decision. This means that there may be **no insurance coverage** for injuries or property damage claims that arise from construction defects on projects that were completed in the last 10 years, such as the J.A. Burns School of Medicine, the Kapolei Judiciary Center, or the Kauai Judiciary Building, just to name a few. If such a horrific accident were to occur in Hawaii at one of these completed projects, there may be no insurance coverage under the *Group Builders* decision. The findings of this court case will not only hit the large contractors in the pocketbook, it also jeopardizes the existence of hundreds of smaller contractors and subcontractors throughout the state. This is a crisis that should be addressed immediately.

Alan Shintani, Inc. urges the joint committees to pass this measure and reinstate the insurance coverage that contractors, subcontractors and developers paid for.

Thank you for considering our concerns on the above measure.

President  
Alan Shintani, Inc.

# Nan Inc

License #ABC-19711  
636 Laumaka Street  
Honolulu, Hawaii 96819  
Telephone: (808) 842-4929  
Facsimile: (808) 841-8281

February 22, 2011

TO: THE HONORABLE ROBERT N. HERKES, CHAIR AND  
MEMBERS OF COMMITTEE ON CONSUMER PROTECTION & COMMERCE

SUBJECT: H.B. 924, HD1 RELATING TO INSURANCE

## NOTICE OF HEARING

DATE: Wednesday, February 23, 2011  
TIME: 2:00 pm  
PLACE: Conference Room 325

Dear Chairs Herkes and Keith-Agaran and Members of the Committee,

Nan, Inc. strongly supports HB 924, HD1.

In *Group Builders, Inc. and Tradewind Insurance Company, Ltd. v. Admiral Ins. Co.* (Haw. App. 2010), the Hawaii intermediate court of appeals held that there was no insurance coverage for contractors and subcontractors for injuries or property damage caused by construction defects. The decision takes away insurance coverage that already existed, and which has been relied upon by the construction industry and by citizens throughout Hawaii for years. HB924, HD1 would restore that coverage and the rights and benefits that contractors and subcontractors have paid millions of dollars for.

Although some insurance companies have issued endorsements, they are all different and if they provide coverage, they only provide coverage from the date of endorsement forward. They provide no coverage for work completed over the past 10 years under policies in effect prior to the Group Builders decision. This means that there may be no insurance coverage for injuries or property damage claims that arise from construction defects on projects that were completed in the last 10 years, such as the J.A. Burns School of Medicine, the Kapolei Judiciary Center, or the Kauai Judiciary Building, just to name a few. If such a horrific accident were to occur in Hawaii at one of these completed projects, there may be no insurance coverage under the Group Builders decision. The findings of this court case will not only hit the large contractors in the pocketbook, it also jeopardizes the existence of hundreds of smaller contractors and subcontractors throughout the state. This is a crisis that should be addressed immediately.

Nan, Inc. urges the joint committees to pass this measure and reinstate the insurance coverage that contractors, subcontractors, and developers paid for. Thank you for considering our concerns on the above bill.



Sandra Kim, In-House Counsel





P.O. Box 4088  
Honolulu, HI 96812-4088  
Phone: (808) 735-3211  
Fax: (808) 735-7416

February 21, 2011

Hearing date: February 23, 2011  
Committees: Committee on Consumer Protection & Commerce and  
Committee on Judiciary  
Time /Place: Conference Room 325 at 2:00 p.m.

**RE: SUPPORT FOR HB 924, HD 1 RELATING TO INSURANCE**

Dear Chairs Herkes, Yamane, Keith-Agaran, and Rhoads and Committee Members:

My name is Allan Lock, and I am the Vice President for Marketing, Estimating, and Preconstruction Services for Hawaiian Dredging Construction Company. Hawaiian Dredging is Hawaii's largest and oldest full-service general contractor, currently employing over 650 employees. Worthy of note, 3 years ago we employed twice that number.

**We—like countless others in Hawaii—strongly support the passage of HB 924, HD 1.** This Bill would correct a decision made by the Hawaii Intermediate Court of Appeals in the Group Builders case that will have very severe consequences for our construction and development communities and for our entire economy.

As you know, the Court's decision negated insurance coverage that had existed for years—and which has been relied upon by the construction industry and by others throughout Hawaii. HB924 would restore that coverage and the related rights and benefits that our **industry has collectively paid millions of dollars for and relied upon to continue doing business in our risky industry.** Our company has paid \$1 million annually for coverage relating to this over the past few years.

Some insurance companies have issued endorsements that they claim will restore the subject coverage. **The problem is that the endorsements are prospective only**—only relevant for projects going forward from the date of the endorsement—and they vary in degrees of effectiveness.

**This means that there is no insurance coverage for injuries or property damage claims arising from construction defects on projects that were completed in the last 10 years.** Some of these projects include:

- The Kapolei Judiciary Center
- The Kauai Judiciary Building
- Frear Hall at the UH

- The John A. Burns School of Medicine, Moana Pacific, and 909 Kapiolani—all major projects that Hawaiian Dredging built. We have built over 2,000 housing units during this time.
- And countless others

Unless immediate action is taken to address this injustice, the decision will have a severe negative impact on all construction projects in Hawaii and on our now fragile economy—think about the **huge exposure for contractors and developers and increased risks and increased costs going forward.**

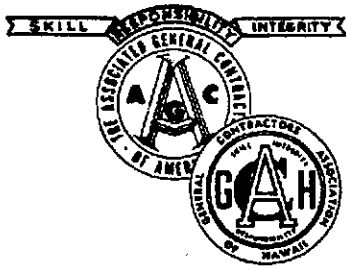
Mahalo for this opportunity to share our views with you.

Aloha,

Allan Lock  
Vice President for Marketing, Estimating, and Preconstruction Services  
Hawaiian Dredging Construction Company

Direct: 808-735-3344





## GENERAL CONTRACTORS ASSOCIATION OF HAWAII

1065 AHUA STREET • HONOLULU, HAWAII 96819-4493 • PHONE 808-833-1681 • FAX 808-839-4167

E-MAIL ADDRESS: [gca@gcawahawaii.org](mailto:gca@gcawahawaii.org) • WEBSITE: [www.gcawahawaii.org](http://www.gcawahawaii.org)

February 22, 2011

TO: THE HONORABLE ROBERT N. HERKES, CHAIR AND  
MEMBERS OF COMMITTEE ON CONSUMER PROTECTION & COMMERCE

THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR AND  
MEMBERS OF COMMITTEE ON JUDICIARY

SUBJECT: H.B. 924, HD1 RELATING TO INSURANCE.

### NOTICE OF HEARING

DATE: Wednesday, February 23, 2011

TIME: 2:00 pm

PLACE: Conference Room 325

Dear Chairs Herkes and Keith-Agaran and Members of the Committee,

The General Contractors Association (GCA), an organization comprised of over five hundred and eighty (580) general contractors, subcontractors, and construction related firms.

The GCA **strongly supports** the passage of HB 924, HD1.

In *Group Builders, Inc. and Tradewind Insurance Company, Ltd. v. Admiral Ins. Co.* (Haw. App. 2010), the Hawaii intermediate court of appeals held that there was no insurance coverage for contractors and subcontractors for injuries or property damage caused by construction defects. The decision takes away insurance coverage that already existed, and which has been relied upon by the construction industry and by citizens throughout Hawaii for years. HB924, HD1 would restore that coverage and the rights and benefits that contractors and subcontractors have paid millions of dollars for.

Although some insurance companies have issued endorsements, they are all different and if they provide coverage, they only provide coverage from the date of endorsement forward. They provide no coverage for work completed over the past 10 years under policies in effect prior to the *Group Builders* decision. This means that there may be **no insurance coverage** for injuries or property damage claims that arise from construction defects on projects that were completed in the last 10 years, such as the J.A. Burns School of Medicine, the Kapolei Judiciary Center, or the Kauai Judiciary Building, just to name a few. If such a horrific accident were to occur in Hawaii at one of these completed projects, there may be no insurance coverage under the *Group Builders* decision. The findings of this court case will not only hit the large contractors in the pocketbook, it also jeopardizes the existence of hundreds of smaller contractors and subcontractors throughout the state. This is a crisis that should be addressed immediately.

The GCA urges the joint committees to pass this measure and reinstate the insurance coverage that contractors, subcontractors and developers paid for.

Thank you for considering our concerns on the above measure.

The Pacific Resource  
**PARTNERSHIP**



Testimony of C. Mike Kido  
External Affairs  
The Pacific Resource Partnership

House Committee on Consumer Protection & Commerce  
Representative Robert N. Herkes, Chair  
Representative Ryan I. Yamane, Vice Chair

House Committee on Judiciary  
Representative Gilbert S.C. Keith-Agaran, Chair  
Representative Ryan I. Yamane, Vice Chair

HB 924, HD1 – RELATING TO INSURANCE  
Wednesday, February 23, 2011  
2:00 pm  
Conference Room 325

Aloha Chair Herkes, Chair Keith-Agaran, and Members of the Committees:

My name is C. Mike Kido, External Affairs of the Pacific Resource Partnership (PRP), a labor-management consortium representing over 240 signatory contractors and the Hawaii Carpenters Union.

PRP **strongly supports** HB924, HD1 – Relating to Insurance, which is intended to avert the crises created by the decision of the Hawaii Intermediate Court of Appeals in *Group Builders, Inc. v. Admiral Ins. Co.* (Haw. App. 2010). Contractors, developers, and others paid millions of dollars for insurance coverage that the Intermediate Court of Appeals now says they do not have. The decision has had a severe negative impact on both the development and construction industries in Hawaii, and at the same time, created a massive windfall for certain insurers.

The construction industry is one of Hawaii's most important industries. At its peak in 2007, it employed over 35,000 people, with total payroll of more than \$1.8 billion. (Source -The State of Hawaii Data Book 2009). In the last ten years, hundreds of private and public construction projects have been completed, including the J. A. Burns School of Medicine, the Kapolei Judiciary Complex, the Kauai Judiciary Building, Frear Hall, the Moana Pacific, 909 Kapiolani, and Kalia Tower, just to name a few. If injury or property damage occurs at one of these projects which is alleged to have arisen out of any construction defect, there would be no insurance coverage for the developer, contractors, or subcontractors. This could be catastrophic.

This bill would reinstate the insurance coverage that contractors, subcontractors, and developers paid for.

Thank you for the opportunity to share our views with you and we respectfully ask for your support on HB 924, HD1 – Relating to Insurance.

**Lindemann Construction Inc.  
500 Ala Kawa St. #216-J  
Honolulu, HI 96817**

TO: THE HONORABLE ROBERT N. HERKES, CHAIR AND  
MEMBERS OF COMMITTEE ON CONSUMER PROTECTION & COMMERCE

THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR AND  
MEMBERS OF COMMITTEE ON JUDICIARY

SUBJECT: H.B. 924, HD1 RELATING TO INSURANCE.

**NOTICE OF HEARING**

DATE: Wednesday, February 23, 2011  
TIME: 2:00 pm  
PLACE: Conference Room 325

Dear Chairs Herkes and Keith-Agaran and Members of the Committee,

**Lindemann Construction Inc. strongly supports** the passage of HB 924, HD1.

In *Group Builders, Inc. and Tradewind Insurance Company, Ltd. v. Admiral Ins. Co.* (Haw. App. 2010), the Hawaii intermediate court of appeals held that there was no insurance coverage for contractors and subcontractors for injuries or property damage caused by construction defects. The decision takes away insurance coverage that already existed, and which has been relied upon by the construction industry and by citizens throughout Hawaii for years. HB924, HD1 would restore that coverage and the rights and benefits that contractors and subcontractors have paid millions of dollars for.

Although some insurance companies have issued endorsements, they are all different and if they provide coverage, they only provide coverage from the date of endorsement forward. They provide no coverage for work completed over the past 10 years under policies in effect prior to the *Group Builders* decision. This means that there may be **no insurance coverage** for injuries or property damage claims that arise from construction defects on projects that were completed in the last 10 years, such as the J.A. Burns School of Medicine, the Kapolei Judiciary Center, or the Kauai Judiciary Building, just to name a few. If such a horrific accident were to occur in Hawaii at one of these completed projects, there may be no insurance coverage under the *Group Builders* decision. The findings of this court case will not only hit the large contractors in the pocketbook, it also jeopardizes the existence of hundreds of smaller contractors and subcontractors throughout the state. This is a crisis that should be addressed immediately.

Lindemann Construction Inc. urges the joint committees to pass this measure and reinstate the insurance coverage that contractors, subcontractors and developers paid for.

Thank you for considering our concerns on the above measure.

**Morris Kozai Landscapes, LLC.**

TO: THE HONORABLE ROBERT N. HERKES, CHAIR AND  
MEMBERS OF COMMITTEE ON CONSUMER PROTECTION & COMMERCE

THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR AND  
MEMBERS OF COMMITTEE ON JUDICIARY

SUBJECT: H.B. 924, HD1 RELATING TO INSURANCE.

NOTICE OF HEARING

DATE: Wednesday, February 23, 2011  
TIME: 2:00 pm  
PLACE: Conference Room 325

Dear Chairs Herkes and Keith-Agaran and Members of the Committee,

**Morris Kozai Landscapes, LLC. strongly supports** the passage of HB 924, HD1.

In *Group Builders, Inc. and Tradewind Insurance Company, Ltd. v. Admiral Ins. Co.* (Haw. App. 2010), the Hawaii intermediate court of appeals held that there was no insurance coverage for contractors and subcontractors for injuries or property damage caused by construction defects. The decision takes away insurance coverage that already existed, and which has been relied upon by the construction industry and by citizens throughout Hawaii for years. HB924, HD1 would restore that coverage and the rights and benefits that contractors and subcontractors have paid millions of dollars for.

Although some insurance companies have issued endorsements, they are all different and if they provide coverage, they only provide coverage from the date of endorsement forward. They provide no coverage for work completed over the past 10 years under policies in effect prior to the *Group Builders* decision. This means that there may be **no insurance coverage** for injuries or property damage claims that arise from construction defects on projects that were completed in the last 10 years, such as the J.A. Burns School of Medicine, the Kapolei Judiciary Center, or the Kauai Judiciary Building, just to name a few. If such a horrific accident were to occur in Hawaii at one of these completed projects, there may be no insurance coverage under the *Group Builders* decision. The findings of this court case will not only hit the large contractors in the pocketbook, it also jeopardizes the existence of hundreds of smaller contractors and subcontractors throughout the state. This is a crisis that should be addressed immediately.

**Morris Kozai Landscapes, LLC.** urges the joint committees to pass this measure and reinstate the insurance coverage that contractors, subcontractors and developers paid for.

Thank you for considering our concerns on the above measure.

CLAY CHAPMAN  
IWAMURA &  
PULICE &  
NERVELL  
Attorneys at law

Topa Financial Center, Bishop Street Tower  
700 Bishop Street, Suite 2100  
Honolulu, Hawaii 96813  
Tele. 808-535-8400  
Fax 808-535-8444  
www.paclawteam.com

Scott I. Batterman: Direct (808) 535-8410  
E-mail: sib@paclawteam.com

February 23, 2011

TO: THE HONORABLE ROBERT N. HERKES, CHAIR AND  
MEMBERS OF COMMITTEE ON CONSUMER PROTECTION & COMMERCE  
  
THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR AND  
MEMBERS OF COMMITTEE ON JUDICIARY  
  
SUBJECT: H.B. 924, HD1 RELATING TO INSURANCE.

NOTICE OF HEARING

DATE: Wednesday, February 23, 2011  
TIME: 2:00 pm  
PLACE: Conference Room 325

Dear Chairs Herkes and Keith-Agaran and Members of the Committee,

Clay Chapman Iwamura Pulice & Nervell **strongly supports** the passage of HB 924, HD1.

In *Group Builders, Inc. and Tradewind Insurance Company, Ltd. v. Admiral Ins. Co.* (Haw. App. 2010), the Hawaii intermediate court of appeals held that there was no insurance coverage for contractors and subcontractors for injuries or property damage caused by construction defects. The decision takes away insurance coverage that already existed, and which has been relied upon by the construction industry and by citizens throughout Hawaii for years. HB924, HD1 would restore that coverage and the rights and benefits that contractors and subcontractors have paid millions of dollars for.

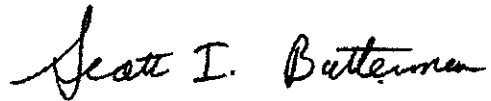
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We urge the joint committees to pass this measure and reinstate the insurance coverage that contractors, subcontractors and developers paid for.



Thank you for considering our concerns on the above measure.

Very truly yours,  
**CLAY CHAPMAN IWAMURA PULICE & NERVELL**

A handwritten signature in cursive script that reads "Scott I. Batterman". The signature is written in black ink and is positioned below the typed name.

Scott I. Batterman  
SIB:ls



# Choice Fence

P.O. Box 1225 Pearl City HI 96782  
809-682-3770

TO: THE HONORABLE ROBERT N. HERKES, CHAIR AND  
MEMBERS OF COMMITTEE ON CONSUMER PROTECTION & COMMERCE  
  
THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR AND  
MEMBERS OF COMMITTEE ON JUDICIARY  
  
SUBJECT: H.B. 924, HD1 RELATING TO INSURANCE.

## NOTICE OF HEARING

DATE: Wednesday, February 23, 2011  
TIME: 2:00 pm  
PLACE: Conference Room 325

Dear Chairs Herkes and Keith-Agaran and Members of the Committee,

**Choice Fence strongly supports** the passage of HB 924, HD1.

In *Group Builders, Inc. and Tradewind Insurance Company, Ltd. v. Admiral Ins. Co.* (Haw. App. 2010), the Hawaii intermediate court of appeals held that there was no insurance coverage for contractors and subcontractors for injuries or property damage caused by construction defects. The decision takes away insurance coverage that already existed, and which has been relied upon by the construction industry and by citizens throughout Hawaii for years. HB924, HD1 would restore that coverage and the rights and benefits that contractors and subcontractors have paid millions of dollars for.

Although some insurance companies have issued endorsements, they are all different and if they provide coverage, they only provide coverage from the date of endorsement forward. They provide no coverage for work completed over the past 10 years under policies in effect prior to the *Group Builders* decision. This means that there may be **no insurance coverage** for injuries or property damage claims that arise from construction defects on projects that were completed in the last 10 years, such as the J.A. Burns School of Medicine, the Kapolei Judiciary Center, or the Kauai Judiciary Building, just to name a few. If such a horrific accident were to occur in Hawaii at one of these completed projects, there may be no insurance coverage under the *Group Builders* decision. The findings of this court case will not only hit the large contractors in the pocketbook, it also jeopardizes the existence of hundreds of smaller contractors and subcontractors throughout the state. This is a crisis that should be addressed immediately.

**Choice Fence** urges the joint committees to pass this measure and reinstate the insurance coverage that contractors, subcontractors and developers paid for.  
Thank you for considering our concerns on the above measure.

Sincerely

  
Robert Sabatini (owner)

**Air Central Inc.  
1717 Colburn St.  
Honolulu, HI 96819**

TO: THE HONORABLE ROBERT N. HERKES, CHAIR AND  
MEMBERS OF COMMITTEE ON CONSUMER PROTECTION & COMMERCE

THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR AND  
MEMBERS OF COMMITTEE ON JUDICIARY

SUBJECT: H.B. 924, HD1 RELATING TO INSURANCE.

NOTICE OF HEARING

DATE: Wednesday, February 23, 2011  
TIME: 2:00 pm  
PLACE: Conference Room 325

Dear Chairs Herkes and Keith-Agaran and Members of the Committee,

**Air Central Inc strongly supports** the passage of HB 924, HD1.

In *Group Builders, Inc. and Tradewind Insurance Company, Ltd. v. Admiral Ins. Co.* (Haw. App. 2010), the Hawaii intermediate court of appeals held that there was no insurance coverage for contractors and subcontractors for injuries or property damage caused by construction defects. The decision takes away insurance coverage that already existed, and which has been relied upon by the construction industry and by citizens throughout Hawaii for years. HB924, HD1 would restore that coverage and the rights and benefits that contractors and subcontractors have paid millions of dollars for.

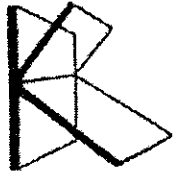
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**Air Central Inc.** urges the joint committees to pass this measure and reinstate the insurance coverage that contractors, subcontractors and developers paid for.

Thank you for considering our concerns on the above measure.

Sincerely,

  
Greg Kiyan  
President  
Air Central Inc.



# KALU GLASS COMPANY, INC.

99-1405 Koaha Street "C"  
Aiea, Hawaii 96701-5613  
(808) 486-7488 FAX (808) 486-7710  
[allinton@kalu-fuller.com](mailto:allinton@kalu-fuller.com)

February 23, 2011

TO: THE HONORABLE ROBERT N. HERKES, CHAIR AND  
MEMBERS OF COMMITTEE ON CONSUMER PROTECTION & COMMERCE

THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR AND  
MEMBERS OF COMMITTEE ON JUDICIARY

SUBJECT: H.B. 924, HD1 RELATING TO INSURANCE.

## NOTICE OF HEARING

DATE: Wednesday, February 23, 2011

TIME: 2:00 pm

PLACE: Conference Room 325

Dear Chairs Herkes and Keith-Agaran and Members of the Committee,  
Kalu Glass Co., Inc. strongly supports the passage of HB 924, HD1.

In *Group Builders, Inc. and Tradewind Insurance Company, Ltd. v. Admiral Ins. Co.* (Haw. App. 2010), the Hawaii intermediate court of appeals held that there was no insurance coverage for contractors and subcontractors for injuries or property damage caused by construction defects. The decision takes away insurance coverage that already existed, and which has been relied upon by the construction industry and by citizens throughout Hawaii for years. HB924, HD1 would restore that coverage and the rights and benefits that contractors and subcontractors have paid millions of dollars for.

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subcontractors throughout the state. This is a crisis that should be addressed immediately.

Kalu Glass urges the joint committees to pass this measure and reinstate the insurance coverage that contractors, subcontractors and developers paid for.

Thank you for considering our concerns on the above measure.

Al Linton  
President



# STEELTECH

99-1324 Koaha Place Aiea, HI. 96701 (808) 487-1445 phone (808) 487-5307 fax oli@steeltechinc.biz

TO: THE HONORABLE ROBERT N. HERKES, CHAIR AND  
MEMBERS OF COMMITTEE ON CONSUMER PROTECTION & COMMERCE

THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR AND  
MEMBERS OF COMMITTEE ON JUDICIARY

SUBJECT: H.B. 924, HD1 RELATING TO INSURANCE.

NOTICE OF HEARING

DATE: Wednesday, February 23, 2011

TIME: 2:00 pm

PLACE: Conference Room 325

Dear Chairs Herkes and Keith-Agaran and Members of the Committee,

SteelTech, Inc. **strongly supports** the passage of HB 924, HD1.

In *Group Builders, Inc. and Tradewind Insurance Company, Ltd. v. Admiral Ins. Co.* (Haw. App. 2010), the Hawaii intermediate court of appeals held that there was no insurance coverage for contractors and subcontractors for injuries or property damage caused by construction defects. The decision takes away insurance coverage that already existed, and which has been relied upon by the construction industry and by citizens throughout Hawaii for years. HB924, HD1 would restore that coverage and the rights and benefits that contractors and subcontractors have paid millions of dollars for.

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SteelTech, Inc. urges the joint committees to pass this measure and reinstate the insurance coverage that contractors, subcontractors and developers paid for.

Thank you for considering our concerns on the above measure.

SteelTech, Inc.

Frederick H.  
Woolsey Jr.

Digitally signed by Frederick H. Woolsey Jr.  
DN: cn=Frederick H. Woolsey Jr.,  
o=SteelTech, Inc., ou,  
email=oli@steeltechinc.biz, c=US  
Date: 2011.02.23 08:06:31 -10'00'

TO: THE HONORABLE ROBERT N. HERKES, CHAIR AND  
MEMBERS OF COMMITTEE ON CONSUMER PROTECTION &  
COMMERCE

THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR AND  
MEMBERS OF COMMITTEE ON JUDICIARY

SUBJECT: H.B. 924, HD1 RELATING TO INSURANCE.

NOTICE OF HEARING

DATE: Wednesday, February 23, 2011  
TIME: 2:00 pm  
PLACE: Conference Room 325



Dear Chairs Herkes and Keith-Agaran and Members of the Committee,

Royal Contracting Co., Ltd. **strongly supports** the passage of HB 924, HD1.

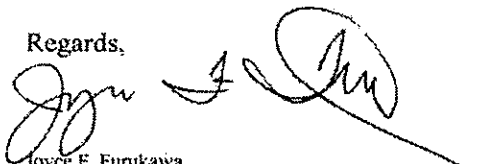
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Royal Contracting Co., Ltd. urges the joint committees to pass this measure and reinstate the insurance coverage that contractors, subcontractors and developers paid for.

Thank you for considering our concerns on the above measure.

Regards,

  
Joyce F. Furukawa  
Royal Contracting Co., Ltd.  
Treasurer, CFO



February 23, 2011

TO: THE HONORABLE ROBERT N. HERKES, CHAIR AND  
MEMBERS OF COMMITTEE ON CONSUMER PROTECTION & COMMERCE

THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR AND  
MEMBERS OF COMMITTEE ON JUDICIARY

SUBJECT: H.B. 924, HD1 RELATING TO INSURANCE.

NOTICE OF HEARING

DATE: Wednesday, February 23, 2011

TIME: 2:00 pm

PLACE: Conference Room 325

Dear Chairs Herkes and Keith-Agaran and Members of the Committee,

**Rons Construction Corporation strongly supports** the passage of HB 924, HD1.

In *Group Builders, Inc. and Tradewind Insurance Company, Ltd. v. Admiral Ins. Co.* (Haw. App. 2010), the Hawaii intermediate court of appeals held that there was no insurance coverage for contractors and subcontractors for injuries or property damage caused by construction defects. The decision takes away insurance coverage that already existed, and which has been relied upon by the construction industry and by citizens throughout Hawaii for years. HB924, HD1 would restore that coverage and the rights and benefits that contractors and subcontractors have paid millions of dollars for.

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**Rons Construction Corporation** urges the joint committees to pass this measure and reinstate the insurance coverage that contractors, subcontractors and developers paid for.

Thank you for considering our concerns on the above measure.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Wayne Y. Matsunaga'.

Wayne Y. Matsunaga

Executive Vice President and General Manager



**S & M SAKAMOTO, INC.**  
GENERAL CONTRACTORS

TO: THE HONORABLE ROBERT N. HERKES, CHAIR AND  
MEMBERS OF COMMITTEE ON CONSUMER PROTECTION & COMMERCE

THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR AND  
MEMBERS OF COMMITTEE ON JUDICIARY

SUBJECT: H.B. 924, HD1 RELATING TO INSURANCE.

NOTICE OF HEARING

DATE: Wednesday, February 23, 2011  
TIME: 2:00 pm  
PLACE: Conference Room 325

Dear Chairs Herkes and Keith-Agaran and Members of the Committee,

S & M Sakamoto, Inc. strongly supports the passage of HB 924, HD1.

In *Group Builders, Inc. and Tradewind Insurance Company, Ltd. v. Admiral Ins. Co.* (Haw. App. 2010), the Hawaii Intermediate Court of Appeals held that there was no insurance coverage for contractors and subcontractors for injuries or property damage caused by construction defects. The decision takes away insurance coverage that already existed, and which has been relied upon by the construction industry and by citizens throughout Hawaii for years. HB924, HD1 would restore that coverage and the rights and benefits that contractors and subcontractors have paid millions of dollars for.

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S & M Sakamoto, Inc. urges the joint committees to pass this measure and reinstate the insurance coverage that contractors, subcontractors and developers paid for.

Thank you for considering our concerns on the above measure.

Dennis M. Ideta  
Senior Vice President





525 Kokea Street, Bldg. B-3 • Honolulu, Hawaii 96817 • Phone: (808) 845-6477 • Fax: (808) 845-6471 • E-mail: rmkaya@hawaii.rr.com  
Building and Improvement Specialist Since 1937  
Serving Hawaii for Over a Half Century

TO: THE HONORABLE ROBERT N. HERKES, CHAIR AND  
MEMBERS OF COMMITTEE ON CONSUMER PROTECTION & COMMERCE

THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR AND  
MEMBERS OF COMMITTEE ON JUDICIARY

SUBJECT: H.B. 924, HD1 RELATING TO INSURANCE.

NOTICE OF HEARING

DATE: Wednesday, February 23, 2011  
TIME: 2:00 pm  
PLACE: Conference Room 325

Dear Chairs Herkes and Keith-Agaran and Members of the Committee,

**ROBERT M. KAYA BUILDERS, INC. strongly supports** the passage of HB 924, HD1.

In *Group Builders, Inc. and Tradewind Insurance Company, Ltd. v. Admiral Ins. Co.* (Haw. App. 2010), the Hawaii intermediate court of appeals held that there was no insurance coverage for contractors and subcontractors for injuries or property damage caused by construction defects. The decision takes away insurance coverage that already existed, and which has been relied upon by the construction industry and by citizens throughout Hawaii for years. HB924, HD1 would restore that coverage and the rights and benefits that contractors and subcontractors have paid millions of dollars for.

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Chairs Herkes and Keith-Agaran  
February 23, 2011.  
Page Two

**ROBERT M. KAYA BUILDERS, INC.** urges the joint committees to pass this measure and reinstate the insurance coverage that contractors, subcontractors and developers paid for.

Thank you for considering our concerns on the above measure.

ROBERT M. KAYA BUILDERS, INC.

A handwritten signature in black ink, appearing to read "Scott I. Higa", is written over the printed name.

Scott I. Higa  
President